

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company

Docket No. RP01-180-000

(Issued January 16, 2001)

HÉBERT, Commissioner, *dissenting*:

If presented with the opportunity, I would not have voted for issuance of data requests in this proceeding in the first instance. Today's order merely exacerbates my concerns, by failing adequately to protect the claimed commercial sensitivity of information provided in response to the data requests. Accordingly, I dissent.

The petitioner in this proceeding, SDG&E, did not ask for additional information to perfect its petition. In response to SDG&E's petition, over 40 intervenors and protestors have filed pleadings in support of or in opposition to the petition. Those pleadings, collectively, provide a comprehensive assessment, by all segments of the natural gas industry, of existing natural gas supply and deliverability (and their effect on natural gas prices) in the Southwest and, in particular, Southern California.

Accordingly, the Commission now has enough information to act on the merits of SDG&E's petition. The Commission does not need the information requested in Staff's December 22, 2000 data requests to render judgment on SDG&E's petition. To the contrary, the data requests serve only to prolong our consideration of the petition and to mire our consideration in needless controversy and litigation. Today's order provides little real protection to respondents to the data requests who are concerned about the treatment of the information they provide. The data requests already provided for protection consistent with the Commission's regulations governing confidentiality. Respondents continue to lack the assurance they seek – that the information they provide will not be shared at some indeterminate point in the future with the other parties. I expect that Producers, SDG&E, SoCal, and (perhaps) other respondents who have not yet filed pleadings on the subject of confidentiality will, unfortunately, find little solace in today's order and will continue to litigate this issue.

Just last week, I dissented from an order that compelled the disclosure of information, purported to be commercially sensitive, to all of the parties to an on-the-record complaint proceeding. See Public Utilities Commission of the State of California v. El Paso Natural Gas Company, et al., Docket Nos. RP00-241-000, et al. (Jan. 10,

2001). In my dissent, I stated that the Commission should proceed to act on a nine-month old complaint, rather than continue to bog down the controversy over information production and distribution. I stated my inability to understand how wide-spread disclosure of the contested information to the parties, even pursuant to protective measures, moved the Commission any closer to a decision on the merits of the complaint.

At least in last week's case, the complainant asked the Commission for discovery to allow it to perfect its complaint. The Commission was presented with the due process question of whether information shared with one party must be shared with all of the parties. Here, in contrast, the petitioner is one of the parties asking for additional restrictions on the exchange of information it did not request.

I do not suggest that the Commission should not be engaged in the monitoring of natural gas (and other regulated) markets. Obviously, it should. This is especially so in light of the recent run-up in natural gas prices and the suggestion, from various market participants, that the market is not operating as a fully competitive market should. I take this suggestion seriously.

I do, however, question the wisdom of combining our ongoing monitoring of natural gas markets with our assessment of SDG&E's petition. As explained above, the data requests implicate the due process rights of the parties and undermine our ability to handle market information in a sensitive and non-litigious manner. My feeling is that both our ongoing market monitoring and our assessment of SDG&E's petition could be handled much more expeditiously and thoroughly if handled separately.

(A side issue – left unaddressed in today's order – is whether the Commission even has the legal authority, under section 14 of the Natural Gas Act or elsewhere, to compel the production of the price and customer information it now seeks. The Producers, in their January 12, 2001 pleading, explain their willingness to cooperate, as long as the requested information is maintained in FERC hands. Absent such an assurance, the Producers are prepared to resist disclosure on the ground that the Commission Staff seeks information related to non-jurisdictional "first sales" from companies which are not jurisdictional "natural gas companies."

The possibility of further litigation on this threshold issue furthers my conviction that the Commission is best able to obtain important market monitoring information outside formal litigation, when protection of sensitive information can better be assured.)

Finally, I take this opportunity to express my disappointment at the way the Commission issued the now-disputed data requests. My colleagues knew a month ago that I opposed the issuance of data requests in this proceeding, for the reasons I already

have expressed. Nevertheless, they authorized (if not directed) Staff to issue the data requests. Because the matter initially was handled pursuant to delegated authority, I was deprived of the opportunity to register my objections publicly.

The topic of natural gas prices is, unfortunately, the subject of increased public attention. The Commission is not obligated to announce to the world that it is doing its job and actively addressing this newly-prominent topic. By issuing the data requests, and thus by implicating real concern for the handling of the sensitive information the Commission now seeks, the Commission actually is undermining its ability to act on SDG&E's petition and to monitor the situation in the Southwest and Southern California on an ongoing basis.

For all of these reasons, I respectfully dissent.

Curt L. Hébert, Jr.
Commissioner